

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA**

Jesus Oswaldo Mansinas Hernandez,  
Petitioner,  
v.  
Charles L. Ryan, *et al.*,  
Respondents.

No. CV-17-03132-PHX-JJT (MHB)

## ORDER

At issue is the Report and Recommendation (“R&R”)(Doc. 15) submitted by United States Magistrate Judge Michelle H. Burns, recommending that the Court dismiss the Petition. Petitioner timely filed two Objections (Doc. 16), which the Court has considered.

After straightforward but thorough analysis, Judge Burns's R&R correctly concludes that the Petition must be dismissed as untimely. Petitioner waived his right to appeal in the underlying state criminal matter pursuant to his plea agreement. Thus his conviction became final for purposes of seeking post-conviction relief 90 days after he was sentenced and judgment was entered on April 13, 2010. Thus he had until July 12, 2010 to file an “of-right” PCR petition. He did not so file any petition until January 6, 2017—six and one half years too late. His conviction became final for purposes of filing Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254 in this Court on July 13, 2010 and expired a year later on July 13, 2011. He did not file his Petition in this Court until September 11, 2017—over six years too late. No tolling applies because Petitioner filed no petitions with any court within the prescribed time limitations so none were or would be

1 valid and operate to toll time. Finally, the Court agrees with Judge Burns that Petitioner  
2 has shown no excuse or cause for his delay in filing. As a result the Court must deny and  
3 dismiss as untimely the Petition.

4 In his Objections, Petitioner does not meet any of the points of Judge Burns's  
5 analysis regarding the operation of the deadlines imposed by AEDPA or by Arizona Rule  
6 of Criminal Procedure 32. He does not challenge the provisions of Rule 32 or Section 2254,  
7 including their timelines and triggers; nor does he attempt to point out some mistake Judge  
8 Burns made in applying them or reaching the conclusion she did.

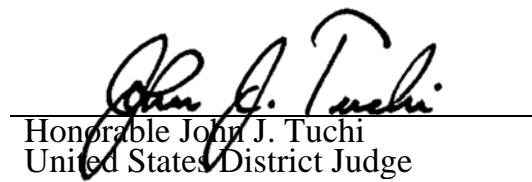
9 IT IS ORDERED overruling Petitioner's Objections (Doc. 16) and adopting the  
10 R&R (Doc. 15) in this matter.

11 IT IS FURTHER ORDERED denying and dismissing with prejudice Petitioner's  
12 Petition for Writ of Habeas Corpus (Doc. 1).

13 IT IS FURTHER ORDERED denying a Certificate of Appealability and leave  
14 to proceed in forma pauperis on appeal because the Court finds dismissal of the Petition is  
15 justified by a plain procedural bar and jurists of reason would not find the procedural ruling  
16 debatable.

17 IT IS FURTHER ORDERED directing the Clerk of Court to enter judgment  
18 accordingly and terminate this matter.

19 Dated this 20th day of December, 2018.

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21   
22 Honorable John J. Tuchi  
23 United States District Judge  
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